

REMARKS

Non-compliance

The Notice of Non-compliance was issued because the listing of claims allegedly lacks the proper claim identifiers. Applicants disagree. It is not clear whether the PTO has considered Applicants' Response to the Restriction Requirement. For example, the election of group and species were both made with traverse. The PTO has not communicated to the Applicant that the traversal was found persuasive (either completely or partially) or whether the Requirement has been maintained. Additionally, the PTO's decision with respect to Applicants' traversal of the election of species requirement has not been stated in writing. As such, the notice is without merit.

In the event that the Restriction Requirement has been made FINAL, Applicants reserve the right to file a petition under §1.144 to review such requirement.

Claims

In order to facilitate prosecution, the claims have been recited with the proper "claim identifiers." Claims 1-6, 9, 10, 13 and 14 are pending of which claims 10, 13 and 14 are withdrawn from consideration. Claims 7-8 and 11-12 are cancelled without prejudice or disclaimer. The claim identifiers recited herein are not to be construed with Applicants' acquiesce to the pending restriction requirement. Should the restriction requirement be withdrawn, either partially or entirely, the status of the claims will be amended to reflect such changes.

Amendments

The claims have been amended to use language in accordance with conventional US practice. Support for the amendment can be found in, for example, page 13, ¶2 and the disclosure contained in page 14, ¶1 of the originally-filed application.

It is respectfully submitted that the amendments do not recite new matter nor do they narrow the scope of the claims. Entry thereof is respectfully requested.

Election

In response to the Restriction Requirement dated April 15, 2008, Applicants hereby elect, with traverse, Group I (claims 1-6, 9) directed to a method of detecting the expression of CD154.

The following species are elected with traverse:

- (A) Applicants elect method for detection
- (B) Applicants elect anti-CD40 antibody

- (C) Applicants elect extracellular detection
 - (D) Applicants elect vital cells
- and
- (E) Applicants elect CD4+ cells.

The Office Action has not established that the species constitute non-overlapping subject matter. Furthermore, Applicants' disagree with the contentions made in the Office Action. No agreement is to be implied by Applicants' election of one or more species.

Withdrawal of the restriction requirement, in its entirety, is earnestly solicited.

At page 3 of the open Office Action, the Examiner alleges that "the invention as well as the species do not provide a contribution over the prior art" because Assenmacher (WO 99/58977) "teach detecting and selecting/isolating antigen-specific T cells based upon CD154/CD40-specific antibodies and employing said enriched antigen-specific T-cells." This contention is respectfully traversed. The instant specification, for example, page 4, ¶2 provides ample evidence Assenmacher's disclosure is distinct from the subject matter of the instant claims. Moreover, all the claims in the application involve related subject matter, for example, a method for detecting or isolating T-lymphocytes comprising detecting the expression of CD154. It is respectfully submitted that, in view of the totality of the disclosure contained in the instant specification, Applicants' claims relate to a single inventive concept, as stated under PCT Rule 13.1. Withdrawal of this requirement is respectfully requested.

The requirement for restriction is further traversed insofar as the Office Action has not demonstrated that an undue searching burden would be required to examine all groups and certainly not to examine at least more than one of the groups. "If search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct invention." (Emphasis added.) See, M.P.E.P. §803.

At a minimum, Applicants request inclusion of Group II (claims 1-7, and 10), directed to a method of isolation of T-lymphocytes, with the claims of the elected Group I. The Office Action has not established that detection is independent of isolation. It is submitted that the groups comprise overlapping subject matter. See, page 13 of the present specification and the disclosure contained in the Examples.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined.

The Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

/Anthony J. Zelano/

Anthony J. Zelano, Reg. No. 27,969
Attorney for Applicant(s)

MILLEN, WHITE, ZELANO
& BRANIGAN, P.C.
Arlington Courthouse Plaza 1, Suite 1400
2200 Clarendon Boulevard
Arlington, Virginia 22201
Telephone: (703) 243-6333
Facsimile: (703) 243-6410

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